152 U.S. 454

RECORD, CASE No 15,404.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1020.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY, APPELLANTS,

vs.

THE UNION AND PLANTERS' BANK, S. P. READ, AND W. A. WILLIAMSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES F
THE WESTERN DISTRICT OF TENNESSEE.

FILED SEPTEMBER 28, 1893.

RECORD, CASE No. 15,404.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1020.

THE STATE OF TENNESSEE AND THE COUNTY OF SHELBY, APPELLANTS,

vs.

THE UNION AND PLANTERS' BANK, S. P. READ, AND W. A. WILLIAMSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Print.
Original bill	1	1
Cost bond	17	6
Order for issue of summons	18	7
Summons	19	7
Marshal's return	20	8
Order for continuance	21	9
Answer	22	9
Replication	41	15
Exhibit A to Answer – Transcript from State courts in State of Tennessee *et al. vs.* Farrington *et al.*	42	16
Agreed statement of facts	42	16
Cost bond	47	18
Final decree of chancery court	48	18
Clerk's certificate	50	19
Chancellor's certificate	51	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 5, 1893.

	Original.	Print.
Exhibit A to Answer—Clerk's certificate	51	20
Decree of supreme court of Tennessee	52	20
Decree on mandate from Supreme Court United States	55	21
Clerk's certificate	61	23
Exhibit B to Answer—Decree of supreme court of Tennessee in City of Memphis *vs.* Farrington *et al.*	63	24
Clerk's certificate	65	25
Exhibit C to Answer—Transcript from State courts in State of Tennessee *et al. vs.* Union and Planters' Bank *et al.*	66	25
Original bill	66	26
Cost bond	81	31
Demurrer	82	31
Final decree	83	32
Appeal bond	84	32
Clerk's certificate	85	32
Decree of supreme court of Tennessee	86	33
Clerk's certificate	88	33
Final decree	89	34
Prayer for appeal	91	35
Appeal bond	92	35
Order granting appeal and waiving service of citation	93	36
Assignment of errors	94	36
Clerk's certificate	96	37

1 No. 458.

Circuit Court of the United States, Western District of Tennessee.

THE STATE OF TENNESSEE and THE COUNTY OF SHELBY, of said State,
vs.
THE UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON.

Original Bill. Filed January 26th, 1893.

To the honorable and circuit judges of the United States for the western district of Tennessee, sitting at Memphis:

Complainant- would respectfully state and show to the court as follows:

I. The above-named defendant, The Union & Planters' Bank, is a banking corporation organized under the laws of the State of Tennessee and having its situs and place of business in the city of Memphis, Shelby county, Tennessee. By an act of the legislature of said State, passed on the 20th day of March, 1858, the De Soto Insurance and Trust Company was incorporated, with all the powers, privileges, and immunities and subject to all the pains, penalties, and forfeitures of the act establishing the Bluff City Insurance Company of Memphis. Said act of incorporation will be found in the 12th section of chapter 166 of the acts of 1857–'8.

2 The said act incorporating the Bluff City Insurance Company of Memphis will be found in the same chapter, to wit, 166, of the acts of 1857–'8, and sections one to ten thereof, inclusive. By the 10th section of said act incorporating the Bluff City Insurance Company it was enacted "that said company shall pay to the State of Tennessee an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes." Said De Soto Insurance and Trust Company was empowered to do a general fire and life insurance business with a capital stock of not less than $300,000. By a subsequent act of the legislature, passed February 12th, 1869, said corporation was authorized to abandon the business of insurance and adopt that of banking, under the name and style of the Union & Planters' Bank of Memphis, with the privilege of increasing its cap-tal stock to a sum not exceeding $1,000,000, and retaining "all their present rights, privileges, and immunities, excepting that of insurance." Shortly after

3 the date of said amending act the privilege aforesaid was accepted by the stockholders of the corporation, the name changed to that of the Union & Planters' Bank of Memphis, the business of insurance abandoned and that of banking adopted, and from that time forth to the present day the said corporation has been engaged in the banking business in the city of Memphis, its banking house and business being located and carried on in the 4th ward of said city, the capital under the privilege granted by said amending act having been increased to and since that time maintained at $600,000, the same being divided into shares of $100 each.

II. By section 14 of the general assessment law of the State of 1887, the same being chapter 2 of the acts of that year, it was enacted as follows:

Be it further enacted, That this act shall not be so construed and shall not so operate as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted, such company or corporation shall be
4 assessed in such way as may be lawful; and in all cases in which by the terms or legal effect of the charter the shares of stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all other taxes, taxes for State, county, and municipal purposes shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus.

The defendant bank claims that both its capital stock and the shares of stock in the hands of its stockholders are exempt from taxation by virtue of its charter. Complainants, however, are advised and submit that the exemption contained in said charter applies to the shares of stock only and not to the capital stock of said institution, and that the latter in any event is subject to the taxing power of the State. On the theory that said shares
5 of stock are exempt from taxation and that the capital stock is subject to taxation, the said defendant bank is indebted to complainants respectively in the manner and amounts following, to wit:

Said capital stock was assessed—

For the year 1887 at	$400,000
For the year 1888 at	400,000
For the year 1889 at	404,000
For the year 1890 at	675,000
For the year 1891 at	456,000

For each of the years aforesaid the State levied upon all the taxable property within its limits an ad valorem tax of thirty cents on the $100, so that for the respective years aforesaid the defendant bank is indebted to the State for taxes duly assessed upon its capital stock in the following sums, to wit:

For the year 1887	$1,200
For the year 1888	1,200
For the year 1889	1,212
For the year 1890	2,025
For the year 1891	1,368

To complainant [The County of Shelby the defendant bank is indebted for the years and on the account aforesaid as follows, to wit:

For the year 1887 (the rate being 95 cents on the $100).... $3,800
For the year 1888 (the rate being 68 cents on the $100). 2,720
6 For the year 1889 (the rate being 70 cents on the $100). 2,828
For the year 1890 (the rate being 78 cents on the $100). 5,265
For the year 1891 (the rate being 75 cents on the $100).... 3,420

The amount due from the defendant bank for each of the years aforesaid bears interest from the 1st day of February of the subsequent year. By another provision of said act of 1887, to wit, sec. 8 thereof, it was provided that no tax should thereafter be assessed upon the capital stock of any bank, but that the stockholders should be assessed and taxed on the market value of their shares of stock therein. By sec. 12 of the same act it was enacted that for the purpose of collecting such taxes, and in addition to all other remedies therefor, it should be the duty of the president or managing officer of such bank to retain so much of any dividend or interest belonging to any stockholder as might be necessary to pay any and all taxes assessed in pursuance of said act. The allegation that the defendant bank is indebted to the State and county as aforesaid for delinquent taxes upon its capital stock is made upon the theory that the facts bring the case within the provisions of sec. 14 above quoted.

Complainants are advised that the capital stock in the
7 hands of the corporation and the shares of stock in the hands of the stockholders are separate and distinct subjects of taxation; that in the absence of any charter exemption it would have been within the power of the State, without subjecting such legislation to the objection of double taxation, to have taxed both the capital stock of the corporation and the shares of stock in the hands of the stockholders; that the charter tax, bonus, or whatever else it may be called, of one-half of one half per cent. to be paid to the State is a tax upon the shares of stock, and that the language "in lieu of all other taxes" means in lieu of all taxes on the shares of stock. It has no effect, as complainants are advised and charge, to exempt the capital stock of the corporation from taxation. It may be, however, that complainants are mistaken in the foregoing construction of the charter, and that the shares of stock are taxable and the capital stock of said institution exempt. The question is one of law and is submitted to the court for determination. Complainants are advised and submit that it will not be held that both the
8 capital stock and the shares of stock are exempt from taxation, and, being advised and believing that both were exempt from taxation, the assessing officers of the State have from year to year, since and including the year 1887, demanded of the proper officers of said corporation a list of the names of the persons owning shares of stock therein on the 10th day of January of each year; but said corporation, by its officers, claiming that the shares of stock therein were not subject to taxation, has refused to furnish the names of persons owning shares of stock in said corporation when demanded as aforesaid or to open the books of the corporation to the assessing officer for the ascertainment thereof. The said assess-

ing officers, accordingly, for the years 1888 and 1889 assessed the shares of stock in the form following, to wit:

For the year 1888, thus:

"Bank, Union & Planters'.

Unknown shares of stock, 6,000 shares, $404.600."

For the year 1889, thus:

"The unknown owners of 600 shares of stock of Union & Planters' bank, valuation, $675,000."

9 The rates of the State and county taxes respectively for the years 1888 and 1889 has already been stated, and if the court should hold that the shares of stock of the defendant bank are subject to taxation and taxed, the shareholders therein are indebted to the State on account of unpaid taxes for the year 1888 in the sum of $1,212.00. For the year 1889 the said shareholders on said account are indebted to the State in the sum of $1,825.00 and to the county in the sum of $2,747.20 for the year 1888 and $4,725.00 for the year 1889, all of said indebtedness bearing interest from the 1st day of February of the year after the year for which the tax was levied. Complainants aver and charge that for the year 1888 the defendant bank declared and paid to its shareholders a dividend of ten (10) per cent. upon its capital stock, and that for the year 1889 it declared and paid a dividend of ten (10) per cent. thereon, and complainants are advised and charge that under sec. 12 aforesaid (the said section having been literally re-enacted in the general assessment law of 1889), and being still in force, the defend-

10 ant bank, upon the theory that said shares of stock are taxable, is personally liable to complainants for the amounts due to them respectively from the shareholders of the defendant bank, in that the said bank has failed out of the said dividends to retain the taxes assessed upon the shareholders and to apply the same to the payment of said taxes. Complainants are not informed who are the owners of said shares of stock. They are informed that it is claimed in their behalf by the officers of the bank representing them that the said shares of stock are not taxable, and that even if taxable the assessment is void for indefiniteness and uncertainty. To the end that complainants may fairly and properly test the question as to whether by the legal effect of the charter of the defendant corporation both the shares of stock in the hands of the stockholders and the capital stock in the hands of the bank are exempt from taxation, S. P. Read, cashier of said bank and the custodian of its books now and for many years heretofore, including the year 1887, is made a defendant hereto and is required in his answer, under oath, from the books of said defendant corporation to state the

11 *the* names of all persons, firms, or corporations owning shares of stock in said bank on the 10th day of January of each and every year and the amount held by each since and including the year 1887. It is the purpose of complainants, when the names of such shareholders shall be furnished in the manner aforesaid, to

have said shares of stock assessed for each of the years aforesaid, and to bring the shareholders before the court in this proceeding by such amended and supplemental pleadings as may be necessary. Complainants do not claim that both the shares of stock in the hands of the shareholders and the capital stock in the hands of the corporation were undertaken to be taxed by the legislature of the State, but they do claim that for and since the year 1887 the revenue laws of the State provided generally that the corporate property in the hands of the corporation should not be taxed, and that the shares of stock in such corporation should be assessed and taxed to the shareholders at their market value. It was further provided by said act of 1887 and by the succeeding biennial sessions
12 of the legislature of the State, as already appears by the quotation hereinbefore made of section 14 of the act of 1887 (which section has been since continuously re-enacted), that the capital stock in the hands of the corporation should be taxed if by the charter provisions the shares of stock were not subject to taxation. Wherefore complainants desire that both the corporation and the shareholders may be brought before the court in one proceeding, and that it may then be determined whether the tax is validly laid on the shares of stock in the hands of the stockholders or on the capital stock in the hands of the corporation. Complainants do not concede but, on the contrary, deny that the aforesaid assessment of the shares of stock for the years 1888 and 1889, are void and invalid, and when the names of the stockholders shall have been discovered and they shall have been brought before the court, the amount of tax due from each of them under said assessment will be shown and judgment prayed for against them. Complainants further aver and charge that defendant Williamson, on the 10th day
13 of January, 1888, and on the 10th day of January, 1889, was and continuously since that time has been and now is the owner of 1,500 or more shares of the defendant company; that, as hereinbefore stated, the total stock thereof for the year 1888 was assessed at $404,000, and for the year 1889 at $675,000; that the assessment of each share thereof was therefore $67.33⅓ for 1888 and $112.50 for 1889; that if it be held that said shares are taxable and taxed the taxes due thereon to the State for the year 1888 is the sum of $303.00, and for the year 1889 the sum of $506.25, and to the complainant county the sum of $686.80 for the year 1888 and $1,181.25 for the year 1889; said defendant therefore, if it be held that said shares are taxable and taxed, is personally indebted to complainants respectively in the sums aforesaid, with interest upon each year's taxes from the 1st day of February of the year succeeding the year for which they were levied, and personal judgment is therefore accordingly prayed for against him, together with the enforcement of any liens fixed by law on said stock as security
14 for the payment of taxes laid thereon. Complainants further show that under the general revenue law of the State they are respectively entitled to recover 10% upon the taxes and interest thereon that may be adjudged due to them as compensation to their agent and attorney, C. Weatherford. Complainants further

state and show that the defendant claims that under and by virtue of the terms of its charter both its shares of stock and its capital stock are exempt from taxation, excepting only the one-half of one per cent. prescribed by the charter, and that the revenue law of the State, undertaking to tax the one or the other, is void because in violation of the clause of the Constitution of the United States which forbids the State to pass any law impairing the obligation of a contract. It claims immunity from taxation upon that ground and upon none other. The case is therefore one arising under the Constitution of the United States and within the jurisdiction of this court, this bill being brought to obtain an adjudication of the question of the exemption of the shares of stock, or of the capital
15 stock, or both, of the defendant bank. Complainants aver that by the statute laws of the State of Tennessee they respectively have liens upon the capital stock of said bank and upon any property in which the same may be invested for the payment of any sums that may be adjudged due from defendant bank on account of taxes laid on said capital stock, and liens upon the shares of stock in said bank for any taxes upon said shares that may be adjudged due thereon.

Prayer.

Premises considered, complainants pray that the parties named as such in the caption be made defendants hereto; that subpœna and copy issue, returnable to the next proper rule day, according to the practice of the court, requiring them to appear and answer the allegations of this bill, the defendant G. P. Read answering under oath and making discovery as asked in the body of the bill; that the court will construe the charter of defendant company and pass upon the claim of immunity from taxation set up by defendant company and its stockholders, adjudging the liability of the one or the
16 other, or both, to taxation, determining upon which the taxes are laid for the several years mentioned in the bill, rendering judgment accordingly, and enforcing the liens given by the statute laws of the State.

And that the court will grant such further relief, general and special, as complainants in equity ought to have.

C. WEATHERFORD,
Solicitor for State & County.

METCALF & WALKER, *Of Counsel.*

17 Know all men by these presents that we, the State of Tennessee and Shelby County therein and C. W. Metcalf and S. P. Walker, — held and firmly bound unto said defendants, The Union & Planters' Bank, S. P. Read, and W. A. Williamson, in the sum of two hundred and fifty dollars; but to be void on condition that the said defendants do pay and satisfy all costs that may accrue in that behalf in the prosecution of the said suit this day commenced by the said plaintiffs in the circuit court of the United States for the western district of Tennessee, at said Memphis, against the

said defendants, and also on failure of the said plaintiffs to prosecute the said suit with effect, and also on failure of the defendants, if convicted, to pay said costs.

Witness our hands and seals this 26th day of January, A. D. 18–3.

STATE OF TENNESSEE, [L. S.]
By METCALF & WALKER, *Att'ys.*
COUNTY OF SHELBY, [L. S.]
By METCALF & WALKER, *Att'ys.*
METCALF & WALKER, *Sureties.* [L. S.]

Approved by and acknowledged before me the 26th day of January, A. D. 1893.

JOHN B. CLOUGH, *Clerk.*
——— ———, *D. C.*

[Endorsed:] No. 458. U. S. circuit court, western district Tennessee, western division. State of Tennessee and Shelby County *vs.* Union & Planters' Bank *et al.* Cost bond. Nov. term, A. D. 18–2. C. Weatherford, Metcalf & Walker, attorneys. Filed at Memphis on the 26th day of Jan'y, A. D. 1893. J. B. Clough, clerk. ——— ———, D. C.

18 UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee, }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1892, at the United States court-house, in the city of Memphis, in said district, on, to wit, the first day of February, A. D. 1893, in the following cause, to wit:

STATE OF TENNESSEE *et al.*, Plaintiff-,
vs.
THE UNION AND PLANTERS' BANK *et al.*, Defendant-. } No. 458.

On motion of complainants, by their solicitors, it is hereby ordered by the court that summons issue herein, returnable to the next March rule day, with copies thereof and of the bill herein for service by marshal.

[Endorsed:] No. 458. Circuit court of the United States, western district of Tennessee. State of Tenn. *et al. vs.* Union & Planters' B'k *et al.* Order of court. Entered and filed 1st day of Feb'y, A. D. 1893. John B. Clough, clerk, by ——— ———, deputy.

19 The President of the United States of America to the marshal of the western district of Tennessee, Greeting:

You are hereby commanded to summons the Union & Planters' bank, a banking corporation organized under the laws of the State

of Tennessee and having its situs and place of business in the city of Memphis, Shelby county, Tennessee, and S. P. Read and W. A. Williamson, citizen- of the State of Tennessee, if to be found within your district, to appear before the circuit court of the United States, in the sixth circuit, for the western district of Tennessee, at Memphis, in said district, on the first Monday in March next, and then and there to plead, answer, or demur to the bill filed in the office of the clerk of the said court on the 26th day of January, A. D. 1893, against said defendants by the State of Tennessee and the county of Shelby, of said State of Tennessee. Herein fail not, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, at Memphis, this first day of February, A. D. 1893, and the 117th year of American Independence.

[L. S.] JOHN B. CLOUGH, *Clerk.*
—— ——, *D. C.*

Memorandum.

The said defendants, The Union & Planters' Bank, S. P. Read, and W. A. Williamson, are required to enter appearance in this suit in the office of the clerk of the circuit court at Memphis, Tennessee, on or before the day on which the subpœna is returnable, or the allegations of the bill herein will be taken for confessed against said defendant- and judgment rendered accordingly.

JOHN B. CLOUGH, *Clerk.*
—— ——, *D. C.*

20 [Endorsed:] No. 458. Circuit court of the United States, western district of Tennessee. State of Tennessee and County of Shelby *vs.* Union & Planters' Bank *et al.* Summons. Issued 1st day of Feb'y, 1893. John B. Clough, clerk. —— ——, deputy. Returnable to March rule day, A. D. 1893. Ret'd and filed 16th day of March, A. D. 1893. J. B. Clough, clerk. —— ——, D. C. C. Weatherford, Metcalf & Walker, attorneys.

Marshal's Return.

This writ came to hand on the date of its issuance, and I duly executed the same as therein commanded by making the contents thereof known to the within-named defendant, The Union & Planters' Bank, at Memphis, Tennessee, on the 3d day of February, A. D. 1893, and at the same time and place delivering to Napoleon Hill, as president, a duly certified copy thereof, together with such copy of the bill in this cause; and I further executed this writ by making known the contents thereof to the defendant The Union & Planters' Bank, at Memphis, Tennessee, on the 3d day of February, A. D. 1893, and also then and there delivering to S. P. Read, cashier, like copy of the same and of said bill; and I further executed this writ by making known the contents thereof to the defendant The Union & Planters' Bank, at Memphis, Tennessee, on the 28th

day of February, A. D. 1893, and also then and there delivering to W. A. Williamson, as vice-president, like copy of the same and of the said bill.

Memphis, Tennessee, February 28, A. D. 1893.

J. W. BROWN,
U. S. Marshal,
By R. B. FANNING, *Deputy.*

21 UNITED STATES OF AMERICA, }
Western Division of the Western District of Tennessee. }

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof begun and held for its November term, A. D. 1892, at the United States court-house, in the city of Memphis, in said district, on, to wit, the 19th day of May, A. D. 1893, in the following cause, to wit:

STATE OF TENNESSEE *et al.*, Plaintiff-,
vs.
THE UNION AND PLANTERS' BANK *et al.*, Defendant-. } No. 458.

For satisfactory reasons to the court appearing, it is hereby ordered by the court that the foregoing-entitled case be, and it is hereby, continued to the next term of the court.

[Endorsed:] No. 458. Circuit court of the United States, western district of Tennessee. State of Tenn. *et al. vs.* Union & Planters' B'k *et al.* Order of court. Entered and filed 19th day of May, A. D. 1893. John B. Clough, clerk, by —— ——, deputy.

22 No. 458.

Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and THE COUNTY OF SHELBY, of said State,
vs.
THE UNION AND PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON. } No. 458. Answer of the Defendants. Filed June 2d, 1893.

Defendants, The Union and Planters' Bank and S. P. Read and W. A. Williamson, make this as their joint and several answer to the bill filed against them in the above-stated cause, or to so much and such parts of said bill as they are advised that it is material and proper that each of them should answer. Reserving the benefit of any and all proper and legitimate objections to the form and contents of said bill, respondents say:

I. The Union and Planters' bank admits that it is a corporation of the State of Tennessee, having its situs in the city of Memphis, Tennessee, and its business office in the 4th ward of said city. It admits that its corporation and history are correctly stated in para-

graph 1 of the bill and the tenth section of its charter cor-
23 rectly set out. Its capital stock was increased prior to the year 1870 to $600,000, and has been maintained at that amount thenceforward. It avers that it has regularly and fully paid to the State of Tennessee for every year since its organization the annual tax of one-half of one per cent. on each share of its capital stock subscribed, which is imposed by the tenth section of its charter.

II. Said Union & Planters' bank admits the legislation of the State of Tennessee in the year 1887, which is set out correctly in the second paragraph of the bill. It does claim that by virtue of its charter both its capital stock and the shares of its stock in the hands of stockholders are exempt from taxation beyond the one-half of one per cent. prescribed by its charter, and denies that the exemption contained in its charter applies to the shares of stock only. It claims that the shares of its stock in the hands of its stockholders and its capital stock are alike protected by said exemption.

24 It claims that if it be true, as alleged in the bill, that the charter tax of one-half of one per cent. is laid upon the shares that the shares are exempt by virtue of the imposition of that tax upon them, and that its capital stock, property, and franchises are protected from taxation by the said clause of exemption; and it claims that whatever may be the subject of the charter tax its capital stock and franchises and the shares of its stock in the hands of its stockholders are by the tenth section of its charter exempt from taxation beyond that charter tax. It does not admit, but, on the contrary, it denies, the legality and regularity of the assessments for taxes for the respective years in favor of complainants as set out in said second paragraph of the bill against respondent and against its shareholders, but it admits that said assessments were made. It admits that section 8 and section 12 of said act of 1887 are correctly copied in said paragraph.

25 It denies that upon any theory either respondent or the holders of its stock can be held liable to any taxation beyond that prescribed by the charter, and denies that it and its stockholders are indebted to complainants in any sum whatever on account of taxes of any sort or for any year. It admits the payment to its stockholders of dividends as charged, and it admits that through its officers it declined to furnish to the assessors the names of its stockholders or to submit its books for their inspection for the reasons stated in the bill; and it admits that — has claimed and now claims that the assessments attempted to be made against its stockholders are void, as well for indefiniteness and uncertainty as upon other grounds, and especially because its stock in the hands of its stockholders was not subject to the taxation sought to be imposed. Respondent S. P. Read is and has been since its organization the cashier of the Union and Planters' bank. He is advised by counsel that he cannot be required and
26 upon that advice he declines "to state under oath from the books of said defendant corporation the names of all persons,

firms, or corporations owning shares of stock in said bank on the 10th day of January of each and every year and the amount held by each since and including the year 1887." It is advised that the stockholders of said bank are not liable to the taxation which it is the purpose alleged in the bill to enforce against them by aid of the discovery demanded from him, and that he has no right or power as cashier to make that discovery. He is advised that this question is *res adjudicata* since the decision of the case of Farrington *vs.* Tennessee, made by the Supreme Court of the United States at its October term, 1887, as reported in 95 United States Reports, page 679. In that case, as he is informed, these identical complainants sought to enforce the payment of taxes assessed prior to 1877 against the stockholders of said bank, and it was held by said court that said stockholders were not liable to any taxation upon the
27 shares of stock in said bank held by them; and defendant W. A. Williamson admits that he was and is the owner of stock of the Union and Planters' bank, as is alleged in the bill, but he denies that the stock which he so owns is subject to taxation, and denies that he is indebted as charged or in any manner or to any amount on account thereof.

Respondents say it is true, as alleged and as hereinbefore stated, that the Union & Planters' bank claims that under and by virtue of the terms of its charter both its shares of stock and its capital stock are exempt from taxation, excepting only the one-half of one per cent prescribed by the charter, and that the revenue law of a State undertaking to tax the one or the other is void because in violation of that clause of the Constitution of the United States which forbids the State to pass any law impairing the obligation of a contract. It does claim immunity from taxation upon that ground, but not, as alleged in the bill,
28 "upon none other." It denies the averment of the bill made in these words: "The case is, therefore, one arising under the Constitution of the United States and within the jurisdiction of this court, this bill being brought to obtain an adjudication of the question of the exemption of the shares of stock or of the capital stock, or both, of the defendant bank." Respondents state and show that the claim of power by the State to tax the defendant bank and the shares of its stock in the hands of its stockholders has been the subject of former adjudications, and that in those adjudications the power to tax either the one or the other was denied. On the 20th day of March, 1873, agreed cases were made up and presented to the second chancery court of Shelby county, Tennessee, under which that court was asked to determine whether the shares of stock in the defendant bank were taxable. One of said agreed —
was made up between the State of Tennessee and the county
29 of Shelby, on the one side, and William M. Farrington, a stockholder in the defendant bank, on the other. The agreement stated the incorporation and organization of the defendant bank, as the facts are by complainants in this bill stated; that the said Farrington was the owner of shares of the stock of said bank to the amount of $15,000; that the State, county, and city claimed the right

under the existing revenue laws of the State to collect taxes upon said shares of stock, and had caused the same to be assessed against said Farrington at the rates and for the amounts in said agreements set out; that said Farrington disputed the legality of the tax upon the ground that said shares of stock were exempt from taxation, except to the extent of one-half of one per cent. imposed by the charter itself. Upon the submission of said agreed cases to said second chancery court the decision of that court was rendered in favor of said Farrington and against the alleged right to tax said shares of stock.

30 From the decision of said chancery court the State and county and the city of Memphis prayed and prosecuted appeals, respectively, to the supreme court of Tennessee; and in that court on said appeals, at its April term, 1876, said decisions or decrees of the said chancery court were reversed by said supreme court, that court holding and adjudging that the said shares of stock were subject to taxation. The opinion of that court in the city case will be found reported in the 8th volume of Baxter's Reports of the decisions of that court, page 539. Decrees in accordance with that opinion were entered in both of said agreed cases.

Farrington thereafter, by due course of proceeding, took the case of the State and county to the Supreme Court of the United States, and at the same time a stipulation of record was entered between the parties in said Supreme Court that the case of the city should abide the decision of the Supreme Court of the United States of the State and county case.

31 The case of the State and county was heard by the Supreme Court of the United States at its October term, 1877, and an opinion pronounced, which will be found reported in 95 U. S, 679. By that opinion the judgment of the State supreme court was reversed upon the holding and adjudication by the Supreme Court of the United States that said shares of stock were not subject to taxation in the hands of said Farrington. A transcript of the record of said case is filed as part of this answer, marked "Exhibit A." A transcript of said stipulation of record in the city case is also filed herewith as part of this answer, marked "Exhibit B." Decrees were entered in both cases under the mandate from Supreme Court of the United States.

Respondents further state and show that on the — day of ——, 1891, the State of Tennessee, for the use of the city of Memphis, and the city of Memphis filed a bill in the chancery court of Shelby county, Tennessee, against the defendent bank and its cashier, S. P. Read,

32 alleging that the capital stock of the defendant bank had been duly assessed for municipal taxation for the years 1887, 1888, 1889, 1890, and 1891; that the said capital stock was legally assessable and subject to taxation; that the rate of municipal taxation for the said several years was, as stated, $2.35 on each $100 of assessed value, and that the defendant bank was indebted to the State for the use of the city of Memphis or to the city of Memphis directly in the amounts averred in that bill. Said bill alleged in the alternative that if the capital stock of said defendant bank was

not taxable, then the shares of stock therein were taxable. It alleged that both were not exempt, and that one or the other of said subjects of taxation was subject to be taxed and was taxable under and by virtue of the revenue laws of Tennessee, and especially section 14 thereof, of 1887, cited in the bill in this cause, and under which the present proceeding is prosecuted.

Complainants asked discovery from said cashier of defendant bank of the names of its stockholders, to the end that they,
33 as well as the corporation, might be brought before the court in one proceeding, and that the court might determine whether the shares of stock in or the capital stock of the defendant bank were or was taxable. That bill was demurred to upon the ground, in substance, that neither the capital stock nor the shares of stock could be taxed beyond the one-half of one per cent. prescribed by the charter itself. On the hearing of the demurrer by the chancery court the demurrer was sustained. From the decree so adjudging an appeal was prosecuted to the next succeeding term of the supreme court of the State by complainants, and on the hearing of that appeal at the April term, 1892, the decree of the chancery court was in all things affirmed. The opinion of the supreme court, then announced, will be found reported in 91 Tennessee Reports (7 Pickle), page 546. Respondents file herewith, as part of this answer, marked "Exhibit C," a full transcript of the record of this last-mentioned clause. Respondents are advised and sub-
34 mit to the court as though formally so pleaded that upon those records the matter of this bill is *res judicata*, and that complainants herein are estopped by the judgments in said record shown. The question was the construction of the charter of the Union and Planters' bank, and that is the question here. Respondents are further advised and now submit to the court that the jurisdiction of this court over this case is not made out upon the face of the bill, or that even if it be *prima facie* so made out the facts above recited in this answer are sufficient to show that the jurisdiction does not exist. It must be apparent that, upon the face of the bill, the case does not arise under the Constitution or laws of the United States; that it involves a Federal question at all (and there is no other ground of jurisdiction) is made to depend solely upon the allegation that the cause arises under the Constitution of the United States because defendants claim immunity from taxation under the contract
35 with the State embodied in the charter, and that the legislation imposing the tax impairs the obligation of that contract. This is making the Federal question by anticipating the defence. If defendants should *should* choose not to interpose that defense there would be, even upon the theory of the bill, no Federal question. Respondents are advised and submit to the court that an indispensable element of a Federal question under the impairment clause of the Federal constitution is that the State court has upheld the legislation of which impairment is predicated. Without an allegation to that effect, aside from other considerations, no Federal question is shown by the bill. *A fortiori*, where the answer shows that the State court has declared the legislation invalid under the

Federal constitution, the essential element of a Federal question, referred to above, is shown not to exist, and this, as respondents are advised and submit, does not depend upon a question as to whether the State adjudication relied upon is technically an estoppel.

36 Respondents do in this answer, as anticipated by the bill, claim immunity under the said impairment clause, but they do not rest their defence solely upon that claim. They rely also upon and now plead section 20 of article 1 of the constitution of the State of Tennessee, which prohibits the making of laws impairing the obligation of contracts. They also interpose still other matters of defence, which they will now state. It is only under section 14 of the Revenue Law of 1887 that complainants claim the right to the taxes sued for. This section 14 is copied into the bill. It is the only act, as respondents believe, that has ever been upon Tennessee statute books taxing the capital stock of banks. The policy of the State has been always to tax shares of stock in the hands of stockholders. Such was the policy when the charter of the defendant bank was granted and was continued by section 8 of the Revenue Law of 1887, as is averred in the bill. To this general policy and law said section 14, as the same is interpreted by

37 the bill, undertakes to make an exception in these words: "And in all cases in which, by the terms or legal effect of the charter, the shares of stock in any corporation are wholly or partially exempt from taxation or in which a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all other taxes, taxes for State, county, and municipal purposes shall be assessed and levied at a rate uniform with the rate levied upon all other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus." Respondents are advised and submit that section 14 has been repealed. It was re-enacted as section 16 of the Revenue Law of 1889. The revenue legislation since 1889 has been confined to amendments of chapters 96 and 130 of the Acts of 1889,

38 and has been had wholly at the extra sessions of 1890, and chapters 25 and 26 of Acts of Extra Session of 1891.

By sec. 30 of chap. 26 of Acts of Extra Sessions of 1891, sec. 8 of the act of 1889 is amended so as to read: "That no tax shall hereafter be assessed upon the capital of any bank or banking association, * * * but the stockholders in such banks or banking association shall be assessed and taxed," etc., being a re-enactment, with some changes of what had been. Sec. 8 of the act of 1887 as well as of the act of 1889. There is, however, no re-enactment of nor reference to sec. 16 of the act of 1889, which was sec. 14 of the Act of 1887. Sec. 21 of this chap. 26 of the Acts of Extra Session of 1891 is as follows: "Sec. 21. Be it further enacted, That any and all laws in conflict with this act be, and the same are hereby, repealed, and that this act take effect from and after its passage, the public welfare requiring it."

This act was approved September 21, 1891. Sec. 16 of the act of

1889 (which was sec. 14 of the act of 1887) was repealed by
39 this act of 1891 because it was in conflict with that act and is not kept alive by any saying or reservation. The repugnancy is irreconcilable. But if section 14 remains in force it discriminates against defendant bank. That bank is taxed by its charter. Under this section it is sought to tax defendant bank in addition to the full extent to which banks are taxed which have no exemption clause in their charter, and thus to convert the exemption into a burden. Sec. 28 of article 2 of the constitution of Tennessee declares: "All property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value."

In its discrimination aforesaid the act of 1887 violates this provision. It also violates this provision in providing that in
40 fixing a tax upon the capital stock its value "shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus."

Section 14 is upon its face, as well as in its effect, an impairment of the obligation of charter contracts in which "a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all other taxes."

Sec. 20 of article one of the constitution of Tennessee is "that no retrospective law or law impairing the obligation of contracts shall be made."

CRAFT AND CRAFT,
Sol's for Respondents.

41 No. 458.

Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and SHELBY COUNTY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON.

No. 458. Replication. Filed June 5, 1893.

The said complainants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the answer of said defendants filed in said cause on June 2d, 1893, for replication thereto say that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver

and prove as this court shall direct, and they pray as in and by their said bill they have already prayed.

METCALF & WALKER,
Sol's for Complainants.

42 No. 458.

EXHIBIT A TO ANSWER. Filed Aug't 11th, 1893.

Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and SHELBY COUNTY
vs.
UNION & PLANTERS' BANK *et al.*

Chancery Court of Shelby County.

STATE OF TENNESSEE,
Shelby County.

Be it remembered that at a term of the 2d chancery court of Shelby county, State aforesaid, began and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 7th day of October, 1872, the same being the first Monday in October, 1872—present and presiding, the Hon. S. P. Walker, chancellor of said court—the following proceedings were had, to wit:

Original Bill.

Filed March 28, 1873.

THE STATE OF TENNESSEE and SHELBY COUNTY
vs.
WM. M. FARRINGTON, Stockholder in the Union & Planters' Bank.

874. Submitted on Agreed State of Facts.

It is agreed that the Union and Planters' Bank of Memphis was duly organized under its charter granted by the legislature
43 of Tenn. on the 20th day of March, 1858, and 12th of February, 1869; that it is now and has been since its organization doing a regular banking business in conformity with the 21st section of the act of 1869, under which it organized; that its business situs and location is in the city of Memphis, Shelby county, Tenn.; that its capital stock, regularly subscribed and paid up, amounts to $675,000.00, divided into shares of $100, making 6,750 shares; that the above-named defendant, Wm. M. Farrington, was throughout the year 1872 the owner of 150 shares of said capital stock, of the value of $150,000.00; that the State of Tennessee and county of Shelby, claiming the right under the existing revenue laws to tax said stock, caused the same to be assessed against the said Wm. M. Farrington for 1872 at the value aforesaid, the State imposing thereon a tax of 40 cents on the $100.00, making a State tax of $60.00, and the county of Shelby imposing a tax of $1.20 on

the $100.00, making a county tax of $180.00 on said $150 shares,
which taxes the State and county now demand payment of
44 from said Farrington.

The said Wm. M. Farrington disputes the legality of said tax and denies the right of the State and county to assess said shares of stock for taxation against him, and claims that under the 10th section of the charter of the Union and Planters' bank, which is as follows, to wit, "That said company shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes," said shares of stock so owned by him are exempt from taxation, except the aforesaid bonus or tax to the State of one-half of one per cent. on each share of capital stock, which it is admitted has been regularly paid to the State.

And the said Wm. M. Farrington claims that all laws imposing other or additional taxes on said shares of capital stock impair the obligation of the contract between the State of Tenn. and the corporators of the Union and Planters' bank contained in said 10th section of its charter, as above set forth, and that any and all
45 laws attempting to impose any other or additional tax on said capital shares of stock are contrary to and in violation of the Constitution of the United States of America and therefore void.

It is agreed that the charter of the Union and Planters' Bank of Memphis is a part of this case, and that and other laws applicable to be subject may be read on the trial or hearing of the case from any books or documents containing the same as if they were copied herein. It is agreed that the second chancery court of Shelby county may try this case and shall decide whether the State of Tenn. and Shelby county have the legal right to impose said tax so assessed and demanded on said shares of capital stock in addition to the said tax to the State of one-half of one per cent. on each share of the capital stock, as provided in the said 10th section of the bank charter above quoted.

It is agreed that if the decision shall be in favor of the State and county judgment shall be rendered against said Wm. M. Farrington
for the aforesaid sums of $60.00 and $180.00 in favor of the
46 State and county respectively, with interest from the 1st day of January, 1873. On the other hand, if the decision shall be in favor of defendant Farrington, then the judgment shall be that said taxes are illegally assessed; that said shares of stock are exempt from all other taxation except the aforesaid one-half of one per cent. to the State of Tenn., as provided in the 10th section of the bank charter; and, further, that the collection of said taxes be enjoined, and such other appropriate decree as the court may deem proper to render in order to protect said Farrington or his assigns from taxation on said stock. Each party has the right and reserves it to appeal or prosecute a writ of error to the court of final resort having jurisdiction upon executing a bond for cost or upon executing such bond as the court may order.

Pending the final decision of this case and the question involved

the State and county of Shelby agree to suspend the collection of said taxes from said Farrington, and also like taxes assessed
47 against other stockholders in said Union and Planters' Bank of Memphis.

The costs of the suit to await the final result.

WM. M. FARRINGTON,
By McKISSICK & TURLEY,
His Solicitors.
W. W. McDOWELL,
County Attorney.

STATE OF TENNESSEE, }
County of Shelby, }

Personally appeared before me L. D. McKissick, one of the abovenamed solicitors for defendant Wm. M. Farrington, — that the questions and controversy involved in the above case are real, and that the proceeding is had in good faith, and that this proceeding is in good faith to determine the rights of the parties.

L. D. McKISSICK.

Subscribed and sworn to before me March 27, 1873.

M. D. L. STEWART, *C. & M.*,
By C. BELCHER, *D. C. & M.*

Cost Bond.

We, the county of Shelby and surety and Wm. M. Farrington & *al.* and surety, acknowledge ourselves indebted to the State of Tennessee in the sum of two hundred and fifty dollars, to be
48 void if the said County of Shelby, complainant, and Wm. M. Farrington & *al.*, defendants, in a case upon an agreed state of facts to be determined by the chancellor, which has this day been filed in the second chancery court of Shelby county, shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill. This 27th day of March, 1873.

WM. M. FARRINGTON, [SEAL.]
By L. D. McKISSICK.
L. D. McKISSICK, *Security.* [SEAL.]

Final Decree.

Entered March 27th, 1873.

THE STATE OF TENNESSEE and THE COUNTY OF SHELBY }
vs. } 874.
WILLIAM M. FARRINGTON. }

This cause came on to be heard before the Hon. Sam. P. Walker, chancellor, upon the agreed case and agreement of counsel, and it appearing to the court that the defendant is a stockholder in the Union and Planters' Bank of Memphis, a corporation organized

under and by virtue of the laws of Tennessee incorporating
49 said bank, the 10th section of the charter providing that the said bank shall pay to the State an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes, and it further appearing that the revenue act of 1870 provides that all shares of any bank shall be subject to taxation, and that under this law the State of Tennessee and the county of Shelby levied the tax mentioned in the agreed case and assessed the same upon the shares of the defendant as therein set forth and have demanded the payment of the same from the defendant, the court is opinion that said tax is illegal; that the law under which the same was levied, assessed, and demanded being in effect to impair the obligation of the contract contained in said 10th section of the bank charter, and that therefore said revenue act is contrary to and in violation of the Constitution of the United States—

It is therefore ordered, adjudged and decreed, and declared by the court that the tax mentioned in the agreed case so levied,
50 assessed, and demanded by the State and county of Shelby from the defendant, as mentioned and agreed in the case, is illegal and void; and it is further ordered, adjudged, and decreed by the court that the State of Tennessee and the county of Shelby, their tax collector and other officers and agents, be, and they are hereby, enjoined from collecting or proceeding to collect the said tax from said defendant. It is further ordered, adjudged, and decreed by the court that the State of Tennessee and the county of Shelby each pay one-half of the costs of this cause, to be certified according to law; from all of which the State and county of Shelby pray an appeal to the next term of the Supreme Court, which is granted upon the execution of a bond for costs according to law.

STATE OF TENNESSEE, }
Shelby County. }

I, E. B. McHenry, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing eleven pages contain a full, true, and perfect transcript of the proceedings had in a certain cause lately pending herein, wherein The State
51 of Tennessee and Shelby County were complainants and Wm. M. Farrington, &c., *et al.*, defendants, as the same appear of record and on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, this 24 day of August, 1893.

[L. S.] E. B. McHENRY,
Clerk and Master.

STATE OF TENNESSEE, }
Shelby County. }

I, W. D. Beard, sole and presiding chancellor of the chancery court of Shelby county, do hereby certify that E. B. McHenry, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same clerk and master of said court, and that his attestation is in due form and by the proper

officer, and that said court is a court of record, and that full faith and credit are due to all his official acts.

Witness my hand and private seal (having no seal of office) this the 2d day of August, 1893.

W. D. BEARD, [SEAL.]
Chancellor.

STATE OF TENNESSEE, }
Shelby County. }

52 I, E. B. McHenry, clerk and master of the chancery court of Shelby county, do hereby certify that the Hon. W. D. Beard, whose genuine official signature appears to the above and hereto-annexed certificate, is and was at the time of signing the same sole and presiding chancellor of the chancery court in and for the county and State aforesaid, duly commissioned and qualified, and that all his official acts as such are entitled to full faith and credit.

Witness my hand and seal of court, at office, in the city of Memphis, this the 2d day of August, 1893.

[L. S.] E. B. McHENRY,
Clerk and Master.

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the fourth Monday of September, A. D. 1876.

Present: The Hon. Jas. W. Deaderick, chief justice, and Robert McFarland, Jno. L. T. Sneed, Thos. J. Freeman, and Peter Turney, judges.

To wit, Monday, November 20th, 1876:

THE STATE OF TENNESSEE and THE COUNTY OF SHELBY
vs.
WM. M. FARRINGTON and THE UNION
53 AND PLANTERS' BANK OF MEMPHIS. } #212, Shelby C. D.

This cause was heard upon the transcript of the record from the second chancery court of Shelby county, and after argument by counsel and full consideration by the court, it appearing that there is manifest error therein, it is therefore ordered, adjudged, and decreed by the court that the decree of said chancery court be reversed, vacated, and annulled.

And upon consideration of the claim made by the defendant that the revenue act of the Tennessee legislature of 1869 & 1870, chapter 81, sec. 1, providing that all shares of stock in any bank, corporation, or company now or heretofore incorporated by or in pursuance to any law of this State or any other State and all public bonds or stocks, except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be

valued and assessed and subject to taxation, under and by virtue of which act the defendant Wm. M. Farrington's shares of stock
54 in the Union and Planters' Bank of Memphis were assessed for State and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Union and Planters' Bank of Memphis and violated section 10, article 1, of the Constitution of the United States, this court doth adjudge and decide this point and claim against the defendant on the ground that the shares of stock in the said bank are not the property or thing exempted by the charter of said bank, but other and different, and so not within the protection of the said charter and of said section of the Constitution of the United States. It is therefore further ordered, adjudged, and decreed by the court that the sum of sixty ($60.00) dollars, State tax, and $180.00, county tax, were properly assessed by the State of Tennessee and the county of Shelby as State and county taxes for the year 1872 upon the shares of stock of the defendant Wm. M. Farrington in the Union and Planters' Bank of Memphis, and therefore that the State of Tenn. do recover of the said Farrington and said bank as
55 his surety the said sum of $60.00, State tax, and that the county of Shelby do also recover of said Farrington and said bank as his surety the said sum of $180.00, county tax, for all which execution may issue, and that both of said sums bear interest at the rate of 6 % per annum from the first day of January, 1873, until paid. It is further ordered, adjudged, and decreed that the State of Tennessee and the county of Shelby recover of said defendant Farrington and said Union and Planters' bank as surety the costs of this cause in this court and the court below, for which execution may issue.

And, to wit, April term, 1878:

THURSDAY, *May 16th*, 1878.

STATE OF TENNESSEE and COUNTY OF SHELBY
vs.
WM. M. FARRINGTON. } #212, Shelby C. D.

This cause came on for further hearing, upon the mandate of the Supreme Court of the United States, in the words and figures following, to wit:

UNITED STATES OF AMERICA:

56 The President of the United States of America to the honor-
[SEAL.] able the judges of the supreme court of the State of Tennessee, Greeting:

Whereas lately, in the supreme court of the State of Tennessee, before you or some of you, in a cause between The State of Tennessee and The County of Shelby, appellants, and William M. Farrington, appellee, wherein the decree of the supreme court entered in said cause on the 20th day of November, A. D. 1876, is in the

following words, viz: "This cause was heard upon the transcript of the record from the second chancery court of Shelby county, and after argument by counsel and full consideration by the court, it appearing that there is manifest error therein, it is therefore ordered, adjudged, and decreed by the court that the decree of said chancery court be reversed, vacated, and annulled, and upon consideration of the claim made by defendant that the revenue act of the Tennessee legislature of 1869–'70, chapter 81, section 1, provided that all shares of stock in any bank, corporation, or company now or here-
57 tofore incorporated by or in pursuance to any law of this State or any other State, and all public bonds or stocks, except United States bonds, which by the laws of the United States are expressly exempt from taxation, shall be valued and assessed and subject to taxation, under and by virtue of which act the defendant Wm. M. Farrington's share of stock in the Union and Planters' Bank of Memphis were assessed for State and county taxes, impaired the obligation of the contract of exemption from taxation contained in the charter of the said Union and Planters' Bank of Memphis and violated section 10, article 1, of the Constitution of the United States, this court doth adjudge and decide this point and claim against the defendant on the ground that the shares of stock in said bank are not the property or thing exempted by the charter of said bank, but other and different, and so not within the protection of the said charter and of said section of the United States.

It is therefore further ordered, adjudged, and decreed by the court that the sum of $60.00, State tax, and $180.00, county
58 tax, were properly assessed by the State of Tennessee and the county of Shelby as State and county taxes for the year 1872 upon the shares of stock of the defendant Wm. M. Farrington in the Union and Planters' Bank of Memphis, and therefore that the State of Tennessee do recover of the said Farrington and of said bank as his surety the said sum of $60.00, State tax, and that the county of Shelby do also recover of said Farrington and said bank as his surety the said sum of $180.00, county tax, for all which execution may issue, and that both of said sums bear interest at the rate of six per cent. per annum from the first day of January, 1873, until paid.

It is further ordered, adjudged, and decreed that the State of Tennessee and the county of Shelby recover of said defendant Farrington and said Union and Planters' bank as surety the costs of this cause in this court and the court below, for which execution may issue," as by the inspection of the transcript of the record of the said supreme court which was brought into the Supreme
59 Court of the United States by virtue of a writ of error, agreeable to the act of Congress in such case made and provided, fully and at large appears; and whereas in the present term of October, in the year of our Lord one thousand eight hundred and seventy-seven, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of the record and was argued by counsel, on consideration whereof it is now here ordered, adjudged, and decreed by the court that the de-

cree of the said supreme court in this cause be, and the same is hereby, reversed with costs, and that the said appellee, Wm. M. Farrington, recover against the said appellants one hundred and two dollars and ninety-three cents for his costs herein expended and have execution thereof; and it is further ordered that the cause be, and the same is hereby, remanded to the said supreme court with directions to enter a decree in favor of the plaintiff in error.

14TH JANUARY, 1878.

60 And the same is hereby remanded to you, the said judges of the said supreme court of the *United* States of Tennessee, in order that such execution and further proceedings may be had in the said cause, in conformity to the judgment and decree of this court above stated, as, according to right and justice and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the tenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Costs of Appellee.

Clerk	$82 93
Attorney	20 00
	102 93

Taxed by—

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

It is accordingly now ordered, adjudged, and decreed by this court that said decree of the Supreme Court of the United States be, and the same is hereby, made the judgment and decree of this court, and that the decree of the second chancery court of Shelby
61 county in favor of defendant be, and the same is, in all things affirmed. It is further ordered and decreed by this court that the State and county tax assessed on the defendants' shares of stock in the Union and Planters' Bank of Memphis were illegal; that the shares of stock in said Union and Planters' bank are exempt from all other taxation, except the one-half of one per cent. to the State of Tennessee on each share of the capital stock subscribed, as provided in the 10th section of the bank's charter, and that the collection of said taxes be, and the same *are* hereby, perpetually enjoined.

It is further ordered, adjudged, and decreed that the State of Tennessee and county of Shelby pay the costs of this cause, for which execution as at law may issue against the county of Shelby and W. W. McDowell, the surety of said county on the bond for costs.

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State
62 for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the decrees pronounced by said court at its September term, 1876, and April term, 1878, in the case of State of Tennessee and Shelby County against Wm. M. Farrington *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court at office, in the city of Jackson, on this the 27th day of July, A. D. 1893, and of the Independence of the United States the 118th year.

[SEAL.] JNO. W. BUFORD, *Clerk.*

63 No. 458.

EXHIBIT B TO ANSWER. Filed June 2d, 1893.

Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON.

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday in April, A. D. 1876.

Present: The Honorable James W. Deaderick, Peter Turney, John L. T. Sneed, Robert McFarland, Thomas J. Freeman, judges.

To wit: December 4th, 1876:

CITY OF MEMPHIS
vs.
WM. M. FARRINGTON *et al.* } # 201, Shelby C. D.

In this cause the parties entered into the following stipulation, which shall be entered on the minutes of the court, viz:

1. Inasmuch as the question- involved in this case are fully and fairly presented in the case, decided at the present term of this court, wherein The State of Tennessee and Shelby County are com-
64 plainants and W. M. Farrington is defendant, which is carried by writ of error to the Supreme Court of the United States for its decision of said question- and which decision will be conclusive of the question involved herein, now, to save the expense and labor of a trial of the same question- before said Supreme Court in this case, the city of Memphis agrees to suspend all attempts to execute the decree of this court in this case or to collect the taxes assessed subsequently to 1872 against the defendants until the final decision of said cause of the State and county aforesaid against said Farrington, and all parties agree to abide the decision of that cause

as conclusive of this. If the decree in that cause is affirmed, then the decree of this court in this case shall be forthwith executed, but if it is reversed and the court decides that said stock is not liable to the taxation attempted to be imposed by the State and county, then the city will satisfy the decree in this cause and pay the costs.

2. The defendants agree to prosecute the writ of error in
65 the other suit above mentioned with due diligence, so as to obtain as speedy settlement of the questions involved as practicable. The filing with the clerk of this court of a certified copy of the judgment of said Supreme Court of the United States in said cause shall be conclusive evidence of the decision of said cause, on which either party demand- the fulfillment of the agreement of the other as herein set forth.

THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the decree pronounced by said court at its April term, 1876, in the case of City of Memphis against W. M. Farrington *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my name and affixed the seal of the court, at office, in the city of Jackson, on this the 24th day of M'ch, A. D. 1893, and of the Independence of the United States the 117 year.

JNO. W. BUFORD, *Clerk*,
[SEAL.] By W. H. TIDWELL, *D. C.*

66 No. 458.

EXHIBIT C TO ANSWER. Filed June 2d, 1893.

Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE *et al.*
vs.
UNION AND PLANTERS' BANK *et al.*

Chancery Court of Shelby County.

STATE OF TENNESSEE,
Shelby County.

Be it remembered that at a term of the chancery court of Shelby county, State aforesaid, began and held at the court-house, in the city of Memphis, in and for said county, on Monday, the 5th day of October, 1891, the same being the first Monday in October, 1891—present and presiding, the Hon. J. S. Galloway, probate judge, sitting by interchange with Hon. W. D. Beard, chancellor, being incompetent—the following proceedings were had, to wit:

Original Bill No. 8087, *R. D. Filed* 22*nd Day of October*, 1891.

THE STATE OF TENNESSEE, for the Use of THE CITY OF MEMPHIS, and THE CITY OF MEMPHIS
vs.
THE UNION AND PLANTERS' BANK and S. P. READ.

To the Hon. W. D. Beard, chancellor of the chancery court of Shelby county, Tennessee:

67 Complainants would respectfully state and show to the court as follows, to wit:

1. The above-named defendant, The Union and Planters' Bank, is a banking corporation organized under the laws of the State of Tennessee and having its situs and place of business in the city of Memphis, Shelby county, Tennessee. By an act of the legislature of said State, passed on the 20th day of March, 1858, the Desoto Insurance and Trust Company was incorporated, with all the powers, privileges, and immunities and subject to all the pains, penalties, and forfeitures of the act establishing the Bluff City Insurance Company of Memphis; said act of incorporation will be found in the 12th section of chapter 166 of the Acts of 1857–'8.

The said act incorporating the Bluff City Insurance Company of Memphis will be found in the same chapter, to wit, 166, of the Acts of 1857–'58 and sections one to ten thereof, inclusive. By the tenth section of said act incorporating the Bluff City Insurance Company it was enacted "That said company shall pay to the

68 State of Tennessee an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes."

Said Desoto — and Trust Company was empowered to do a general fire and life insurance business, with a capital stock of not less than $300,000.

By the subsequent act of the legislature passed February 12th, 1869, said corporation was authorized to abandon the business of insurance and adopt that of banking, under the name and style of the Union and Planters' Bank of Memphis, with the privilege of increasing their capital stock to a sum not exceeding $100,000 and retaining "all their present right, privileges, and immunities excepting that of insurance." Shortly after the date of said amending act the privilege aforesaid was accepted by the stockholders of the corporation, the name changed to that of the Union and Planters' Bank of Memphis, the business of insurance abandoned and that of banking adopted, and from that time forth to the present day

69 the said corporation has been engaged in the banking business in the city of Memphis, its banking-house and business being located and carried on in the 4th ward of said city, the capital under the privilege granted by said amending act being increased to and has been since that time *been* maintained at $600,000, the same being divided into shares of $100 each.

For the year 1887 the capital stock of the defendant company

was duly assessed, both by the regular assessing officer and by the county trustee, at the sum of $400,000.00. The municipal tax rate for that year was $2.35, and the amount due from the defendant bank upon the theory that the shares of stock therein are exempt from taxation is the sum of $9,400.00, with interest from May 1st, 1887.

For the year 1891 the capital stock of said Union and Planters' bank in Memphis was assessed at the sum of $456,000.00. The State of Tennessee for that year levied a total tax rate of $1.75 on every $100.00 of property in the city of Memphis for the use of said city, and the said defendant corporation is therefore indebted
70 to the State for the use of said city or to said city directly in the sum of $7,980, the unpaid tax on the capital stock aforesaid for said year 1891, and the sum last aforesaid bears interest at the rate of six per cent per annum from the first day of May, 1891.

III. By section 14 of the general revenue laws of the State passed in 1887, the same being chapter 2 of the acts of that year, it was enacted as follows, to wit:

"Be it further enacted, That this act shall not be so construed and shall not so operate as to exonerate or release from taxation any company or corporation whose charter exempts stock and shares thereof from taxation; but it is hereby enacted that in all cases where such stock is exempted such company or corporation shall be assessed in such way as may be lawful; and in all cases in which by the terms or legal effect of the charter the shares of the stock in any corporation are wholly or partially exempt from taxation, or in which a rate of taxation on the shares of stock is fixed and prescribed and declared to be in lieu of all other — taxes for State,
71 county, and municipal purposes shall be assessed and levied at a rate uniform with the rate levied upon other taxable property upon the capital stock of said corporation, the value of which capital stock shall be fixed and returned by the assessor as being equal to the aggregate market value of all the shares of stock in said corporation, including the net surplus." But notwithstanding the provisions of said section, the capital stock of said corporation was not assessed for the years 1888, 1889, or 1890. Ascertaining this fact, the county trustee of Shelby county, as he was by law authorized to do, has duly assessed said capital stock for the years aforesaid as follows, to wit:

For the year 1888	$400,000
For the year 1889	404,000
For the year 1890	675,000

For the year 1888 the city ad valorem was $2.35 on the $100.00. For the year 1889 the ad valorem taxation in and — the said city was $2.35 on the $100.00. For the year 1890 the ad valorem taxation in and for said city levied by the State was $2.35 on the
72 $100.00. So that said defendant corporation, for the years aforesaid, is indebted to the complainant City of Memphis, or to the State for its use, in the sums following, to wit:

For the year	1888	$9,400 00
" " "	1889	9,870 00
" " "	1890	11,926 25

Each of the several amounts aforesaid bears interest from the first day of May of the year for which the tax was levied.

IV. The defendant corporation claims that by virtue of its original charter and amendments thereto its capital stock is exempt from taxation. Said capital stock is assessable and taxable under sec. 14 aforesaid of chapter 2 of the Acts of 1887, the said section having been continuously in force since said enactment to the present time. For the year 1872 the State, county of Shelby, and city of Memphis, under the legislation of the State then in force, undertook to assess and tax as other property was assessed and taxed for that year the shares of the stock in the hands of the stockholders of said company. This effort to tax said shares of stock was resisted
73 by said shareholders, litigation ensued in the second chancery court of Shelby county, Tennessee, the controversy was in that court determined in favor of the shareholders and against the power of the State, county, and city to tax the shares of stock, and appeal therefrom was taken to the supreme court of the State, in which the decree of said chancery court was reversed and a decree rendered in favor of the power of the State to tax said shares, from which last decree a writ of error was sued out from the Supreme Court of the United States, and under a hearing in that court the decree of the supreme court of Tennessee was reversed, the case remanded to that court with directions to enter a decree affirming the decree of the second chancery court of Shelby county and negativing the power to tax said shares of stock in the hands of the stockholders. Complainants are advised that the capital stock in the hands of the corporation and the shares of stock in the
74 hands of the stockholders are separate and distinct subjects of taxation; that in the absence of any exemption clause it was without the power of the State, without subjecting such legislation to the objection of double taxation, to have taxed both the capital stock of the corporation and the shares of stock in the hands of the stockholders; that the charter tax, bonus, or whatever else it may be called, of one-half of one per cent. to be paid to the State is a tax upon the shares of stock, and that the language "in lieu of all other taxes" means in lieu of all other taxes on the shares of stock. It has no effect, as complainant is advised and charges, to exempt the capital stock of the corporation from taxation.

V. Complainants are advised that under the provisions of the act of 1887 aforesaid, which act, so far as is material to the questions here involved, has been continuously in force, the capital stock of said corporation or the shares of stock in the hands of the stockholders therein is or are taxable. They are further advised that the immunity and exemption embraced or claimed to be
75 embraced in the charter of said defendant corporation cannot operate to exempt both the shares of stock and the capital stock in the hands of the corporation from taxation. Being ad-

vised and believing that both the corporation and its capital stock and the shares of stock could not successfully claim exemption from taxation, the assessing officers of the State have from year to year since and including the year 1887 demanded of the proper officers of said corporation a list of the names of the persons owning the shares of stock therein on the 10th day of January of each year; but the said corporation, by its officers, claiming that the shares of stock were not subject to taxation, have refused to furnish the names of the shareholders in said corporation when demanded as aforesaid. The said officers accordingly for the years 1889 and 1890 assessed the shares of stock in the following form, to wit:

"Bank, Union and Planters'.

Unknown shares of stock, 6,000 shares, $404,600," and the
76 assessment for the year 1890 was made upon "the unknown owners of 6,000 shares of stock of Union and Planters' bank, valuation $675,000."

Complainants are not informed who are the owners of said shares of stock. They are informed that it is claimed in their behalf by the officers of the bank representing them that the said shares of stock are not taxable, and, even if taxable, the assessment is void for indefiniteness and uncertainty. To the end that complainants may fairly and properly test the question as to whether by the legal effects of the charter of the defendant corporation both the shares of stock in the hands of the stockholders and the capital stock in the hands of the bank are exempt from taxation S. P. Read, cashier of said bank and the custodian of its books now and for many years heretofore, including the year 1887, is made a defendant hereto and is required in his answer to state under oath from the books of said defendant corporation the names of all persons, firms, or corporations owning shares of stock in said bank on the 10th day of January of each and every year and
77 the amount held by each since and including the year 1887.

It is the purpose of the complainant- when the name- of such shareholders shall be furnished in the manner aforesaid to have said shares of stock assessed for each of the years aforesaid and to bring the shareholders before the court in this proceeding by such amended and supplemental pleadings as may be necessary. Complainants do not claim that both the shares of stock in the hands of the stockholders and the capital stock in the hands of the corporation *was* undertaken to be taxed by the legislature of the State, but they do claim that for and since the year 1887 the revenue laws of the State provided generally that the corporate property in the hands of the corporation should not be taxed, and that the shares of stock in such corporation should be assessed to and taxed to the shareholders at their market value. It was further provided by said act of 1887 and by the succeeding biennial session of the legislature of the State, as already appears by the quotations here-
78 inbefore made of sec. 14 of the Act of 1887, that the capital stock in the hands of the corporation should be taxed if by the charter provisions the shares of stock were not subject to taxa-

tion; wherefore complainants desire that both the corporation and the shareholder- may be brought before the court in one proceeding, and that it may then be determined whether the tax is validly levied on the shares of stock in the hands of the stockholders or on the capital stock in the hands of the corporation. Complainants do not concede, but, on the contrary, deny, that the aforesaid assessment of the shares of stock for the years 1889 and 1890 *are* void and invalid, and when the names of the stockholders shall have been brought before the court the amount of tax due from each of them under said assessment will be shown and judgment prayed for against them.

VI. Complainants have been informed that since the adoption by the State of Tennessee of the constitution of 1870 the defendant banking company has increased its capital stock. *It is* ad-
79 vised in that event the new stock is taxable. *It* asks that the defendant S. P. Read may, on his oath, state in his answer whether or not the capital stock of the defendant banking company has been increased and, if so, to what extent since the adoption of the constitution of the State of 1870, to wit, since the 4th day of May, 1870, and that he may further, on oath, state the date or dates of such increase of stock if it has been increased more than once since the date last aforesaid, and that from the books of said company he may furnish a list of the persons, firms, or corporations owning shares of stock on the 10th day of January of each year since and including the year 1887 that has been issued since the adoption of the constitution of the State on the 4th day of May, 1870.

This discovery on oath is asked to the end that the shares of stock may be assessed so far as the same has not already been legally done, and that the owners thereof may by appropriate amends and supplemental pleadings be brought before the court in this cause for the purpose of enforcing and collecting the tax dues therefrom.

80 VII. By an act of the legislature passed March 19, 1889, and approved March 23, 1889, the same being chapter 104 of the Acts of 1889, a privilege tax on banking within and for the city of Memphis (then the taxing district of Shelby county) was levied in terms following, to wit: "On the privilege of banking, $1 on every $1,000 of paid-in capital tax, but in no case less than $50 annually." Complainants state that the amount of capital stock of the defendant banking company since and during the year 1889 has been $600,000, and that under the enactment aforesaid the said defendant banking company is indebted to the State of Tennessee, for the use of the city of Memphis or to the city of Memphis directly, in the sum of $600 annually, payable at the dates of the passage of the act last aforesaid for the year 1889 and on the first day of January for the years 1890 and 1891.

Premises considered, complainants pray that the parties named as such in the caption be made defendants hereto; that copy and subpœna issue, returnable to the next December rule day of
81 the court; that the defendant corporation answer under its

corporate seal — that the other defendants answer under oath the specific matters as asked in the body of the bill; that the court may determine whether the corporation or the shareholders therein have any immunity from taxation under the charter of said company; that complainants may have a decree against the defendant corporation for such taxes, with proper interest, as may be legally due from it, and may have such further and general relief as in equity they ought to have upon the facts stated.

F. T. EDMONDSON,
METCALF & WALKER,
Sol's for Complainants.

Cost Bond.

We, City of Memphis, as principal, and —— ——, as surety, acknowledge ourselves indebted to Union and Planters' bank and *al.* in the sum of two hundred and fifty dollars, to be void if the said City of Memphis, complainant in a bill which has this day been filed in the chancery court of Shelby county against the
82 said Union & Planters' bank and *al.*, shall pay all such costs as may be awarded against it by the court in its decrees and orders in said cause. This 22d day of October A. D. 1891.

S. P. WALKER.
F. T. EDMONDSON.
C. W. METCALF.

Demurrer of Defendants.

Filed November 6, 1891.

In the Chancery Court of Shelby Co., Tenn.

STATE OF TENNESSEE, Use, &c., & *al.*
vs.
UNION & PLANTERS' BANK and S. P. READ, Cashier. } 8087, R. D.

Defendants demur to the bill filed against them on 22 October, 1891, as entered above on the rule docket. The ground of this demurrer is that the object sought by this bill is to enforce the payment of taxes by said bank in excess of the sum of annual tax of one-half of one per cent. on each share of stock subscribed, which is the tax by the terms of the charter contract between said bank and the State of Tennessee, which shall be in lieu of all other
83 taxes. Defendant- says that said bank is not liable for nor bound to pay the taxes demanded and sought to be so collected, and that defendant Read, sued as the cashier, cannot be required to answer said bill nor make the discovery sought from bill in aid of the effort to collect such taxes.

CRAFT & CRAFT,
Sol's for Defendant-.

Final Decree.

Entered March 28th, 1892.

STATE OF TENNESSEE, &c.,
vs.
UNION & PLANTERS' BANK *et al.*

This cause came on to be heard upon bill of complaint and demurrer of defendant- before his honor J. S. Galloway, judge of probate court of Shelby county, sitting in this court by interchange with the Hon. W. D. Beard, who, having been of counsel in said case, was therefore incompetent to hear the same. Upon argument had by counsel the court orders, adjudges, and decrees that said demurrer is well taken upon all points therein set out, and the same is
84 sustained and the bill of complaint dismissed with cost, for which execution may issue against it and S. P. Walker, C. W. Metcalf, and F. T. Edmondson, sureties in cost bond; from which the complainant- prays an appeal to next term of supreme court, to be holden at Jackson, Tennessee, on 1st Monday in April next, which appeal is granted upon complainants giving bond security for cost as the law directs.

Appeal Bond.

We, the State of Tennessee, for use of city of Memphis, and surety J. J. Williams, acknowledge ourselves indebted to the Union & Planters' bank *et al.* in the sum of two hundred and fifty dollars, to be void if the said State of Tennessee, for use, &c., who has prayed for and obtained an appeal from the decree of the chancery court of Shelby county in a cause in which The State of Tenn., for use of city of Memphis, is complainant and The Union & Planters' Bank *et al.* defendants to the next term of the supreme court of Tenn.
85 for the district of west Tennessee, to be held at Jackson, Madison county, on the first Monday of April next, shall pay all such costs as shall be awarded against it by said supreme court.

This the 1st day of April, 1892.

STATE OF TENNESSEE, [SEAL.]
By METCALF & WALKER, *Att'ys.*
J. J. WILLIAMS. [SEAL.]

STATE OF TENNESSEE, }
Shelby County, } *ss:*

I, E. B. McHenry, clerk and master of the chancery court of Shelby county, do hereby certify that the foregoing 24 pages contain a full, true, and perfect transcript of all the proceedings had in a certain cause lately pending herein, wherein The State of Tenn., for use, &c., complainant, and Union & Planters' Bank *et al.*, defendants, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and fixed the seal of said court, at office, in Memphis, this the 31st day of March, 1892.

E. B. McHENRY, *C. & M.*,
[SEAL.] By T. B. CALDWELL, *D. C. & M.*

86 THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the transcript pronounced by said court at its April term, 1892, in the case of State of Tennessee, use, &c, against Union & Planters' Bank *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 24 day of March, A. D. 1893, and of the Independence of the United States the 117th year.

JNO. W. BUFORD, *Clerk*,
[SEAL.] By W. H. TIDWELL, *D. C.*

THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof at the April term, A. D. 1892.

Present: The Hon. W. C. Caldwell, acting chief justice,
87 and D. L. Snodgrass, H. H. Linton, L. Lehman, and B. J. Lea, associate judges; when the following proceedings were had, to wit:

JUNE 7TH, 1892.

STATE OF TENNESSEE, &c.,
vs.
UNION & PLANTERS' BANK. } # 50, Shelby C. D.

This cause was heard upon the transcript of the record from the chancery court of Shelby county, and, it appearing to the court that in the decree below there is no error, it is therefore considered by the court that the decree be affirmed, complainants' bill dismissed, and that the City of Memphis and S. P. Walker and C. W. Metcalf and F. T. Edmondston, sureties on cost bond, pay the costs of the court below, and they and J. J. Williams, surety on appeal bond, pay the cost of appeal, for which let execution issue.

The court adjudicates none of the points raised by the demurrer of the defendants except those covered by and embraced in the opinion filed, being of opinion that such other points are immaterial after the ruling made in said opinion.

88 THE STATE OF TENNESSEE:

I, John W. Buford, clerk of the supreme court of said State for the western division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect, and complete copy of the decree pronounced

by said court at its April term, 1892, in the case of State of Tennessee, use, &c., against Union & Planters' Bank *et al.*, as appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office, in the city of Jackson, on this the 24th day of March, A. D. 1893, and of the Independence of the United States the 117th year.

JNO. W. BUFORD, *Clerk*,
[SEAL.] By W. H. TIDWELL, *D. C.*

89 UNITED STATES OF AMERICA,
Western Division of the Western District of Tennessee.

In the Circuit Court of the United States within and for the Western Division of the Western District of Tennessee, in the Sixth Judicial Circuit Thereof.

Proceedings had in said court at a regular term thereof, begun and held for its May term, A. D. 1893, at the United States courthouse, in the city of Memphis, in said district, on, to wit, the 23d day of August, A. D. 1893, in the following cause, to wit:

STATE OF TENNESSEE and COUNTY OF SHELBY, Plaintiff-,
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON, Defendant-. } No. 458.

This cause came on for final hearing on the pleadings and proof, and, having been argued by counsel and considered by the court, the court is of the opinion as follows, to wit: First, that the objection to the jurisdiction of the court set up in the answer of the defendants is not well taken; that the jurisdiction of the court should be sustained and the cause determined on its merits; second, that by the charter of the defendant bank both the capital stock of the said bank and the shares of stock therein are exempt from
90 taxation; third, that the defense of *res judicata* set up in the answer need not, therefore, be passed upon. It is therefore ordered, adjudged, and decreed that the bill of complaint herein be, and it is hereby, dismissed at the cost of complainants, for which execution will issue against complainants and C. Weatherford, S. P. Walker, and C. W. Metcalf, sureties on the cost bond.

[Endorsed:] No. 458. Circuit court of the United States, western district of Tennessee. State of Tenn. *et al. vs.* Union & Planters' B'k *et al.* Order of court. Entered and filed 23d day of Aug't, A. D. 1893. John B. Clough, clerk, by —— ——, deputy.

91 Circuit Court of the United States for the Western District of Tennessee.

STATE OF TENNESSEE and COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON. } # 458, Eq. Docket.

Prayer for Appeal.

Filed Sept'r 23, 1893.

To the honorable the judges of the circuit court of the United States for said district:

Come again the complainants in the above-entitled cause, by their solicitors, and petition the court for an appeal to the Supreme Court of the United States from the decree entered in said cause by said circuit court on the 22nd day of August, A. D. 1893.

And your petitioners will ever pray, etc.

METCALF & WALKER,
C. WEATHERFORD,
For Complainants.

92 Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON. } # 458, Eq. Docket.

Appeal Bond.

Filed Sept. 23, 1893.

KNOW all men by these presents that we, the State of Tennessee and the County of Shelby, therein, as principals, and —— —— and —— —— as sureties, are hereby held and firmly bound unto the Union & Planters' Bank, S. P. Read, and W. A. Williamson in the sum of five hundred dollars, to be paid to said obligees; — which payment, well and truly to be made, we and each of us bind ourselves, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, signed, and dated, at Memphis, Tennessee, this 23d day of September, A. D. 1893.

Whereas the above-named State and county have prosecuted an appeal to the Supreme Court of the United States to revise the decree and judgment rendered in the above-entitled cause by the circuit court of the United States within and for the western division of the said western district of Tennessee:

Now, therefore, the consideration of this obligation is such that if the above-named complainants shall prosecute said appeal to effect and answer all costs and damages if it shall fail to make good

its plea, then this obligation shall be void; otherwise remain in full force.

STATE OF TENNESSEE,
COUNTY OF SHELBY,
By S. P. WALKER, *Solicitor.*
S. P. WALKER.
C. WEATHERFORD.

Approved.
Memphis, Tenn., September 23, 1893.
E. S. HAMMOND,
U. S. District Judge.

93 Circuit Court of the United States, Western District of Tennessee.

STATE OF TENNESSEE and COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK and Others.
458, Eq. Docket. Decree. Entered Sept. 23, 1893.

The State of Tennessee and The County of Shelby, complainants in the above-entitled cause, by their solicitors, this day appeared in open court and prayed an appeal herein to the next term of the Supreme Court of the United States, and the said complainants having executed an appeal bond in due form, and the same having been approved by the presiding judge of this court, the said appeal is hereby granted and allowed.

The defendants, by their solicitors, being in open court at the time this appeal is allowed, waived the issuing or service of citation thereon.

94 Circuit Court of the United States for the Western District of Tennessee.

STATE OF TENNESSEE and THE COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON.
458, Eq. Docket.

Assignment of Errors.

Filed Sept'r 23, 1893.

The State of Tennessee and The County of Shelby, complainants in the above-entitled cause, assign errors in the decree below in the respects following, to wit:

I.

In that it was adjudged by said decree that by the charter of the defendant bank both the capital stock of said bank and the shares of stock therein are exempt from taxation.

II.

In that it is adjudged by said decree that the capital stock and franchises of the defendant bank are exempt from all taxes by virtue of its charter. It should have been ruled that the charter of the defendant bank exempted only the shares of stock therein from any tax other than the one-half of one per cent. fixed by the charter.

III.

In that it was adjudged by said decree that the shares of stock in said bank were exempt from all taxes other than the one-half of one per cent. fixed by the charter. It being ruled that the capital stock was exempt by virtue of the charter of the defendant bank, it should have been ruled that the shares of stock were not exempt; or, it being ruled that the shares of stock were thereby ex-
95 empt, it should have been ruled that the capital stock was not exempt. In no event should it have been ruled that both the capital stock and the shares of stock were exempt.

METCALF & WALKER,
C. WEATHERFORD,
For Appellants.

96 THE UNITED STATES OF AMERICA, }
Sixth Judicial Circuit, Western District of Tennessee. }

I, John B. Clough, clerk of the circuit court of the United States for the western division of said western district of Tennessee, do hereby certify that the papers hereto attached are a full, true, perfect, and correct copy of the originals and of the entire record and proceedings in said court, as the same now appears of record and upon the files in my office, in the following cause, to wit:

STATE OF TENNESSEE, COUNTY OF SHELBY
vs.
UNION & PLANTERS' BANK, S. P. READ, and W. A. WILLIAMSON. } No. 458.

In testimony whereof I have hereunto written my name and affixed the seal of said court, at my office, in the city of Memphis, Tennessee, this 23d day of September, A. D. 1893, and of the Independence of the United States the 118th year.

{ Seal Circuit Court of the United States for the Western Division of the Western District of Tennessee. }

JOHN B. CLOUGH, *Clerk.*

Authentication.

I, E. S. Hammond, a judge of said court, do hereby certify that John B. Clough, whose genuine signature appears to the foregoing

certificate, is and was at the date of the same clerk of said court, and that his attestation is in due form.

E. S. HAMMOND,
Judge of the District Courts of the United States
for the District Aforesaid.

[Endorsed:] No. 458. Circuit court of the United States, western district of Tennessee. State of Tennessee, County of Shelby *vs.* Union & Planters' Bank, S. P. Read, and W. A. Williamson.

Endorsed on cover: Case No. 15,404. W. Tennessee C. C. U. S. Term No., 1020. The State of Tennessee and The County of Shelby, appellants, *vs.* The Union and Planters' Bank, S. P. Read, and W. A. Williamson. Filed September 28th, 1893.